IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3707 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HUSENBHAI GIGABHAI JHANKARA

Appearance:

1. Special Civil Application No. 3707 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner Corporation and Mr.J. S. Brambhatt, learned advocate appearing for respondent workman.

#. In the present petitioner, the petitioner has challenged the award passed by the Industrial Tribunal, Bhavnagar in Reference [IT] No.25 / 1995 dated 25th August, 2000. The Industrial Tribunal, Bhavnagar has set aside the punishment order, whereby the competent authority has imposed punishment of stoppage of three increments with cumulative effect and recovery of Rs.100/- by order dated 30th October, 1991. The industrial dispute has been raised by the respondent workman challenging the punishment order which ultimately referred for adjudication to the Industrial Tribunal, Bhavnagar.

#. Learned advocate Mr.H.S.Munshaw on behalf of the petitioner Corporation has submitted that the respondent workman is driver, has committed misconduct while driving the vehicle in careless and negligent manner which resulted into an accident and therefore, punishment which has been imposed by the competent authority, which is legal and valid and therefore, no interference was required by the tribunal to set aside said punishment. Therefore, the tribunal has committed gross error in setting aside the said punishment order. Mr.Munshaw, learned advocate has also submitted that the concerned respondent driver has been declared acquittal but this acquittal awarded by the Court of Law has not effect on the proceedings of the departmental inquiry and therefore, the order passed in the criminal case cannot be looked into and the same would not have any bearing on the punishment order passed by the petitioner Corporation. Mr.Munshaw, learned advocate also submits that the tribunal has also committed error while coming to the conclusion that finding is baseless and perverse. The tribunal has reappreciated the evidence and therefore also, the tribunal has committed error and hence, interference of this Court is called for while exercising its inherent powers.

#. Learned advocate Mr.J.S.Brambhatt on behalf of the respondent workman has submitted that the tribunal has rightly appreciated the evidence which was led in the departmental inquiry. The reporter was examined in the departmental inquiry. However, there was no eye witness and no other independent witness was examined in the departmental inquiry. Thereafter, the driver was examined in the departmental inquiry proceedings. The reporter who has not visited the place of accident and he has not seen the accident place and therefore, evidence of such reporter cannot be relied on to punish the respondent driver. He also submits that the tribunal has given cogent reasons in coming to its conclusion after

examining the Panchanama and other relevant records, so also the report of the reporter and therefore, the tribunal has not committed any error while passing such award and hence, no interference is required.

#. I have considered submissions made by the learned advocates for the parties. The allegations of misconduct against the respondent driver was that he had driven the bus - vehicle in negligent and careless manner and resultantly, accident occurred. In response to the chargesheet, departmental inquiry was initiated but in departmental inquiry proceedings, no eye witness was examined by the Corporation. The reporter who was examined in the departmental inquiry proceedings, has not seen the accident and he was not eye witness. Thereafter, the driver was examined in the departmental inquiry proceedings. Therefore, once no eye witness was examined in the departmental inquiry proceedings, then question of proving the charge by leading oral evidence in departmental inquiry in absence of the eye witness, cannot be established. The another aspect that the tribunal has also examined the Panchnama and the report of the reporter and come to the conclusion that the bus was in correct side and the workman was not negligent. On the contrary, the respondent driver was not driving the bus carelessly and negligently but there was mistake on the part of the motorcyclist and that is how the accident occurred. The tribunal has considered the finding given by the competent authority and also come to the conclusion that finding is not based upon the legal evidence and therefore, same is baseless and perverse. The tribunal has also considered that for the very incident, criminal case was lodged against the respondent driver, wherein he was granted acquittal. Therefore, in that view of the matter, ultimately the tribunal has come to the conclusion that punishment imposed by the competent authority can not be sustained and same is required to be set aside, which according to my opinion, the Tribunal has not committed any error while passing the award. There seems no jurisdictional error or procedural irregularity committed by the tribunal and hence, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution. Therefore, present petition requires rejection and the same is rejected accordingly.

#. Learned advocate Mr.J.S.Brambhatt on behalf of the respondent workman has submitted that some suitable directions may be issued to the petitioner Corporation to implement the award in question. Considering the fact that this Court has upheld the order passed by the

Tribunal and request on behalf of the respondent workman, it is directed to the petitioner Corporation to implement the award in question within period of two months from the date of receiving the copy of this order.

Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 7-3-2002 [H.K.Rathod, J.]

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